>>> "Michael Skinner" <mskinner@mskinner.com> 05/01/04 06:35PM >>>
Dear Justices of the Supreme Court:

I offer my comments to certain of the proposed changes to MCR 6.500 et seq.

The gist of my objections can be reduced to the theme that the proposed rules unnecessarily promote finality over error-correction. As others have commented, the 6.500 motion is already a frail tool for reopening a conviction.

Specifically, the proposed one-year deadline puts an undue burden on inmates to muster the resources to challenge a conviction. Others have pointed out the financial difficulties that many inmates face, but the logistic difficulties for these inmates can be just as daunting. For instance, in my short time practicing, I have been contacted by numerous inmates who, despite having the funds to hire an attorney, have spent months trying to find an attorney to simply return their letters requesting assistance on their 6.500 motions.

In addition, one notion behind deadlines is to promote expeditious litigation. The 6.500 motion by its nature already promotes this goal. Inmates do not want to be in prison. There is nothing about imposing a one-year deadline that will offer more incentive to bring these motions earlier than the already great incentive of release from incarceration.

This new deadline is akin to a statute of limitations. But the main point of statutes of limitations is to protect adverse parties from stale claims. Adverse parties move on, relying on the faliure of a potential claimant to pursue litigation. I am not sure what reliance the State of Michigan has made based on an unasserted 6.500 "claim," other than a bureacratic satisfaction that a case once potentially open has been closed forever. I am as happy as the next paper-pusher to move files off of my desk, but I believe that this satisfaction should be subservient to legitimate claims of error.

In any event, the defendant filing a 6.500 motion already bears a significant burden of proof and any staleness will likely result in his inability to sustain his burden. Again, the inmate has every incentive to bring his motion early.

And the burden of proving error is already significant under the current 6.500 rules with out increasing that burden. Only in the theoretical world could someone despair that the current 6.500 rules imposed a burden that was permitting too many defendants to reopen cases because "all" that they need to demonstrate is "good cause" and "actual prejudice." In practice, as others have pointed out, relief under this chapter is very rare. Returning to my theme, I question the necessity of increasing a burden that is already well-nigh unbearable in practice.

Finally, I do not support the proposed page limitation. It is hard to justify any particular page-limitation with solid reason. Why thirty pages and not thirty-five? Only the legislator knows for sure. But in my opinion, too many cases require significant factual and procedural histories followed by significant detailed legal arguments to be squeezed

into twenty-five pages. Briefs that cut too many corners can be as unhelpful in their sparseness as longer briefs can be in their verbosity.

Again, there is an inherent incentive to limit the length of one's motion -- despite any reader's best efforts, the longer the writer drones on, the weaker his point becomes. Not all writers, to be sure, recognize this incentive, but given the essentially appellate nature of the 6.500 motion and its concomitant need for detailed and solid legal support, I believe that a fifty page limit is more appropriate.

Hoping that I have not droned on too much by this time, I end my comments here.

Cordially,
Michael Skinner